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County of Santa Clara
18CV323345
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14 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

15 COUNTY OF SANTA CLARA

16 Jessica AGUILERA; Mirna and Nathaniel
17 ALCANTARA; Carlos ANGEL
18 CERVANTES; Roberto ARAUJO and Maria
19 HERNANDEZ; Beatriz AVILEZ; Raymond
20 BEHVAND; Erin BENAVIDES; Samantha
21 BENAVIDES, individually and as Guardian
22 ad Litem to JOSIAH BENAVIDES, a minor
23 child; Gabriel and Maria BRAVO; Maria
24 BRAVO; Ben CAMBARE and Elvie
25 CLEODORE; Reyna CARILLO; Marie and
26 Jorge CASTENEDA; Luis CASTENEDA-
27 PELAYO; Heng CHHUNN; Chau Van
28 DANG Mary Hang DAO; Jepte DE ALBA;
Leticia DE LA CRUZ; Ruben and Maria DE
LA CRUZ; Anthony DO; Thi Thuy Bui
DUONG; Thuy DUONG; Sinia ELLIS; Sue
EVANICKY; Raymond FIDDLER; Mong
Van FOUSEK; Consuelo FRIAIZ and Angel
LOPEZ; Sue FRY and David GOODE;
Anahi GARCIA; John GARCIA; Yadira
Yolanda GARCIA; Shannon GEORGE; Cary
GOULD; Andre GRIFFIN; Samuel and
Patricia GUMMO; Crystal HERNANDEZ;
Florentino HERNANDEZ and Silvia
BARRAGAN; Nen Van HO; Thanh HO;
Tien Thi Thuy HOANG; Angelha HUYNH;
Danny HUYNH; Tai HUYNH; Tuan
HUYNH; Tuan Quoc HUYNH; Von IN;
Gabriel JENNINGS and Tracy OYUELA;
Cheryl JOHNSON; Dara KEO; Brendan and
Catherine LAVELLE; Bao LE; Kiet LE;

Case No.: 18CV323345

**COMPLAINT FOR INVERSE
CONDEMNATION, BREACH OF
MANDATORY DUTY, NUISANCE,
NEGLIGENCE, TRESPASS,
DANGEROUS CONDITION OF PUBLIC
PROPERTY, NEGLIGENT INFILCTION
OF EMOTIONAL DISTRESS,
INTENTIONAL INFILCTION OF
EMOTIONAL DISTRESS, and
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

1 Tam Thi LE; Tracy LE; Tri Huu LE; Dieu
2 LE and Du NGUYEN; Anne and Erik
3 LOERA; Angelina LOPEZ; Blanca LOPEZ;
4 Eang LOR; Consuelo Zavala LUNA; Soonh
5 LY; Tho MA; Hong MAI; Tuan Ngoc MAI;
6 Chrystie MARIANO; Teresso and
7 Magdalena MARTINEZ; Mark MCCLURE;
8 Sean, Mitzi and Caitlin MCELLIGOTT;
9 Patricia MENDOZA; Audelia MIRANDA;
10 Pearl and Daniel MONROY; Yemi
11 MONTIEL and Adrian OLIVERA; Rosa
12 MORA; Anselmo MORALES; Delphina
13 MUÑOZ; Pedro and Yolanda NAJAR;
14 Consuelo NELSON; Sau Lan NG; A Thi
15 NGUYEN; Bang NGUYEN; Duy
16 NGUYEN; Hot NGUYEN; Hung NGUYEN;
17 Nam-Thanh NGUYEN; Ngoc-Tuyet
18 NGUYEN; Nhut NGUYEN; Phung
19 NGUYEN; Tommy NGUYEN; Trang
20 NGUYEN; Hien NGUYEN ; Le Thi
21 NGUYEN; Thanh NGUYEN and Trang VU;
22 Christina OLIVO; Sosinat OUTRY and
23 Theany LUN; Teresa PEDRIZCO; Laura
24 PERALTA; Olga and Esaul PEREZ; Hoang
25 PHAM; Thiep PHAM and Tinh PHAM;
26 Maria PONCE; Joe and Tess PRUM; Kea
27 PRUM ; Daniel QUAN; Xuan Mai QUAN;
28 Elizabeth QUINTANA and Jose PEREZ; Joe
RAMIREZ and Mary Fernandez RAMIREZ;
Lorena RAMIREZ; Manuel and Maria
RAMIREZ; Claudia REGALADO; Patricia
REGUIRIN and Wilson Vaca ABREGO;
Srey REN; Yolanda REYNOSO; Erica
ROBLES; Linda ROCHA; German ROCHA;
Francisco and Concepcion ROMERO; Maria
Elena ROMERO; Armando
RUTHERFORD; Teresa SANCHEZ and
Ruben MORALES; Richard and Yulia
SAWATSKY; Carol SEGURA; Baltazar
SERRATO and Luz BUENROSTRO;
Elizabeth SEVILLA; John SOARES; Phiep
SON; Maria Rosario SOLIS; Edward
SPECK; Lang TANG; Sandi TAYLOR;
Nang and Van TRAN; Quang TRAN; Thoa
Kim TRAN; Cuc TRUONG; Danh
TRUONG; Giong and Quanh Le TRUONG;
Kalvin TRUONG and Ngoc Anh TRAN;
Nhung TRUONG; Tran TRUONG; Anna
Daisy VASQUEZ; Misael VELA and Teresa
MARTINEZ; Jose VILLALOBOS; Dau VU;
Ngoc Anh Thi and Julie VU; The-Ngoc VU;
Elyana YANES and Tony MEZA; Olvyn
ZELAYA; Claudia ZEPEDA,

29 Plaintiffs,
30

31 v.
32

1 SANTA CLARA VALLEY WATER
2 DISTRICT; CITY OF SAN JOSE;
3 COUNTY OF SANTA CLARA; and DOES
4 1 – 100,

Defendants.

The Plaintiffs complain of Defendants Santa Clara Valley Water District (“the Water District” or “SCVWD”), the City of San Jose (“the City” or “San Jose”), the County of Santa Clara (“Santa Clara County” or the “County”), and DOES 1 through 100 (collectively, “Defendants”), as follows:

NATURE OF THE CASE

1. This action arises out of the devastating flooding that occurred along Coyote Creek in and around San Jose, California on or about February 21, 2017 as a result of the overtopping of the public works project known as the Leroy Anderson Dam (“Anderson Dam” or “the Dam”), which caused Coyote Creek to overflow its banks and thereby discharge water, dirt and debris onto and across Plaintiffs’ properties, damaging Plaintiffs’ real and personal property and causing personal injury and other consequential damages as alleged herein.

2. The catastrophic overspilling of Anderson Dam and flooding of Coyote Creek was the direct and proximate result of Defendants' failure to properly and reasonably design, control, maintain and operate both the Dam and Coyote Creek.

3. The flooding along the Coyote Creek and its consequences were exacerbated by Defendant City's failure to: 1) properly design and maintain its storm sewers; 2) properly design and maintain the flapper valves along the creek; 3) properly design, construct and maintain the City park in Rock Springs, thereby enabling the water from the creek to overflow its banks; 4) properly establish, supervise and manage the emergency shelters to which the Plaintiffs who were displaced by the flood were taken by city employees; and 5) prioritize affordable housing for poor and working families — especially those displaced by flooding — thereby subjecting displaced Plaintiffs and their neighbors to additional trauma and distress. Plaintiffs' government claims attest to this distress. For example :

a. A. Huynh (a named Plaintiff in a related case, *Amargo et al. v. Santa Clara Valley Water District et al.*, Santa Clara Sup. Ct. Case No. 18CV32210) lived in Rock Springs since 1982 until displaced by the flood and overwhelmed about how to replace everything lost due to the flood., thus suffering a severe toll from the flood and becoming too sick from being displaced to work, as explained below:

11111

“At 7-Trees community shelter I caught the flu or some virus; even with flu

medicine it did not go away. My request to be put in a hotel was denied. I was so sick that on 3-15-2017 I went to the restroom, coughed up blood, fainted and fell to the ground. I was taken to Regional Hospital by ambulance. I lost a lot of blood due to an ulcer. The hospital said the cause of the ulcer was stress and Advil that I took due to my flu. My deductible for the hospital stay is over \$5,000; the bill was \$5,240.90. Then in June the landlord sent a Notice of rent increase at the apartment by more than 50%.”

b. Griselda and Paulino Madrigal (named Plaintiffs in *Amargo et al. v. Santa Clara Valley Water District et al.*, *supra*) had been renting an apartment on South 21st Street in San Jose for nine years at the time of the flood. It was affordable, they had good neighbors, and it was a nice home. Then their lives were shattered:

"The flooding came with no warning and no chance to protect ourselves, our home, cars, or our possessions from dirty, fast-moving and fast rising water. We grabbed what we could and got out. Our apartment and most everything in it was ruined by the flood waters and we have already been forced to move several times. We stayed with relatives for about a month; then we had to ask for help and were sent to a Best Western motel for a month and a half. Then we were transferred to an apartment on El Camino Real in Santa Clara but like the other places it's just temporary. With all this this disruption caring for our four boys, getting them to school and Paulino getting to work has been very stressful.

It's hard to be moved from place to place like this and our sons don't want to move again. We are hoping flood victims like us who were renters and whose apartments were flooded out can have a future that is better than that.

UPDATE as of January 2018: Mr. and Mrs. Madrigal have not found affordable housing anywhere in San Jose and will be moving to the Central Valley in March, yet another challenge and major disruption for them and their children.” .

4. The damage and injury caused by the February 21, 2017 flooding was also the direct and proximate result of Defendants' failure to properly give timely notice to residents including Plaintiffs and their families despite Defendants' actual knowledge of a dangerous condition of public property including *inter alia* that Anderson Dam was going to overtop and, inevitably, flood the areas along its banks.

5. Even a few hours advance warning of what Defendants knew was happening would have substantially reduced losses of personal property and emotional distress and would have provided real

1 opportunities to secure and protect real property and to secure medications upon which several Plaintiffs
2 relied to maintain their health. Many of the Plaintiffs and their neighbors have described their losses and
3 suffering in their claims filed with Defendants, such as:

4 a. Samantha Lopez (a named Plaintiff in *Amargo et al. v. Santa Clara Valley Water*
5 *District et al., supra*), a 24-year-old with lupus who lived with her parents and
6 siblings in an apartment in Rock Springs, left home early on the day of the flood and
7 was unable to return to get her medicine that she needed to take to manage her lupus.
8 The lack of access to her medication and the severe stress related to the flood
9 exacerbated her lupus. As she has explained:

10 “For me, it wasn't so much the scene of being evacuated or the fear of
11 watching the quickly rising waters that caused me anxiety and sickness but it
12 was the stress and overwhelming thought of not knowing when to return or
13 what would happen to my family and me. It was watching my parents lose
14 everything that they had worked hard for all these years, and the fear of being
15 robbed like many families had been after such a terrible disaster that made
my stress rise. It was the anticipation of waiting for my father to return after
disappearing into the dark waters that night only to try and retrieve his life
savings and securing our now abandoned home but only to encounter chest
high dirty waters....

16 I had a tension in my neck, shoulders and head caused by a mind full of
17 questions that no-one seemed interested in answering, restless nights filled
18 with panic and anxiety waking me in fear and most alarming of all days
19 without my daily medication for lupus. My body was starting to feel the lack
of steroids and my lupus was starting to flare due to all the stress and
disruption....

20 I think that those responsible believe that the worst things that the victims of
21 the flood could have lost were cars, clothes and items that can be quickly
22 replaced. I hope that I am wrong, but in the event that I am right, I wanted to
23 share my story as a victim and how differently and permanently it has
affected me. Because I will now have to watch my health much more closely
due to a flood that could have been prevented.” .

24 b. Plaintiff Mark McClure, a homeowner who was living on 20th Street with his wife
25 and family, lost a lifetime of treasured letters from his deceased father, who grew up
26 in the Jim Crow South and was one of the first African-Americans to join the
27 Air Force after President Truman desegregated the U.S. military. He had carefully
28 stored the letters, but the flood waters destroyed them nevertheless:

“One of the worst things about trying to cope with flood is how to explain to my mom that all the letters ever written by my late father — letters I was entrusted to keep — turned into mush when toxic flood water flowed into our storage shed and dislodged the box from the shelf where I put them for safe keeping....

One of the constant things I wonder about is if the people who were in harm's way had been wealthy and privileged residents of the West Side of the Valley (rather than working class and poor residents of the East Side) whether there would have been a quite different response to prevent the flood in the first place and certainly to warn the residents to evacuate with sufficient time to protect their precious memories. It seems to me that disasters like this flood usually don't happen to the upscale west siders because the authorities take the very steps to protect them and their property that were NOT taken during the Coyote Creek flood of 2017 (and also for the earlier floods in 1997 and 1983)." .

c. Roma Smith (a named Plaintiff in *Amargo et al. v. Santa Clara Valley Water District et al.*, *supra*), age 10, lived in the Olinder neighborhood with her parents and suffered sustained trauma from having to be rescued as the flood waters started seeping into their house:

“I was very scared... I cried for an hour... I thought the water would come in and destroy everything... at a minimum, 4 hours of warning would have helped so many people be ready, clear out basements, get sandbags, move cars, save things that can’t be replaced. If [the Defendants] knew about the problem days before, then what happened was a ‘land grab’ because if they cared about us, they would have told us.” .

6. Plaintiffs, and each of them, have suffered an injury in an amount within the jurisdiction of the court.

PLAINTIFFS

7. Plaintiffs are all victims of the Coyote Creek Flood of 2017 and the actionable government conduct that caused the flood and plaintiffs' damage and injury. Each Plaintiff owned real property and/or personal property that was damaged in the flood. Some plaintiffs suffered personal injuries and consequential damages as a consequence of the flood and/or the failure of government agencies to give notice of the flood despite the fact that Defendants and each of them knew or should have known that the flood was going to occur and was occurring in time to prevent or limit damage and injuries to the Plaintiffs and their property. In addition, Plaintiffs suffered such foreseeable

consequential damages as lost wages, loss of irreplaceable heirlooms and family treasures, medical costs, and extra expenditures for housing, food and transportation.

8. Each Plaintiff was a resident of California who at the time of the flood resided in and/or owned real property in the City of San Jose, County of Santa Clara, California. In addition to losing (and/or suffering diminution in the value of) real and personal property, each Plaintiff also suffered substantial emotional distress and other consequential damages from these devastating losses and disruptions.

9. Pursuant to Government Code Section 911.2, each of the adult Plaintiffs identified herein filed timely claims against the Water District, as well as against the City of San Jose and/or Santa Clara County, which claims set forth the circumstances upon which this action is based. Each of the Defendant public entities with which claims have been filed has expressly or by inaction denied Plaintiffs' claims.

DEFENDANTS

10. Defendants are those governmental agencies that own and/or are responsible for the design, maintenance, management, supervision, and/or operation of Anderson Dam and Reservoir, as well as related structures such as the outlet valve and the spill ways designed to manage and draw down the level of water in Anderson Reservoir. Defendants are also responsible for the management of the area referred to as the Coyote Creek watershed area. Likewise, Defendant agencies are responsible for warning residents of and protecting them from imminent danger to their homes, their health, their possessions, and their well-being,

11. Defendant Santa Clara Valley Water District is a public agency that operates as a special district that controls and is legally responsible for flood control throughout Santa Clara County and in particular the design, construction, maintenance, management and operation of Anderson Dam and Reservoir and relevant portions of Coyote Creek.

12. Defendant City of San Jose is a Charter City that is responsible for providing timely emergency services to its residents and for giving reliable and timely notice to its residents of dangerous situations it knows are about to take place or are taking place. Defendant City of San Jose also controls and is legally responsible for the maintenance and management of relevant portions of Coyote Creek.

1 13. Defendant County of Santa Clara has a long history of oversight of flood control within
2 the entirety of Santa Clara County, dating back to the time when the area was known as “the Valley of
3 Heart’s Delight” due to its rich agricultural past. For many decades Defendant Santa Clara County has
4 had a significant, widely-recognized role and responsibility in the oversight of county-wide
5 governmental policy and action on both water conservation and flood control. For example, in or about
6 1952 the Board of Supervisors of Defendant Santa Clara County formed the Santa Clara County Flood
7 Control and Water Conservation District (“SCCFCWCD”), with the boundaries of the SCCFCWCD
8 encompassing all of Santa Clara County. In 1964, the SCCFCWCD changed its name to Santa Clara
9 County Flood Control and Water District (“SCCFCWD”), dropping the word “Conservation.”

10 14. Then in or about 1968, recognizing the need for specialized knowledge to oversee
11 construction and operation of water and flood control facilities, the Board of Supervisors of Defendant
12 Santa Clara County effectuated and approved the merger of the SCCFCWD and the Santa Clara Valley
13 Water Conservation District (“SCVWCD”).

14 15. The new agency that resulted from this merger retained the name of the SCCFCWD and
15 the elected board of the SCVWCD, but also added two appointees named by the County Board of
16 Supervisors. Staffs of the merged agencies were combined, and a county-wide agricultural advisory
17 committee and water commission were established so that the merger enabled integrated resource
18 management, addressing both water supply and flood control through one county-wide agency, and
19 eliminated duplication of effort. In 1974, Santa Clara County Flood Control and Water District changed
20 its name to the Defendant Water District’s current name: Santa Clara Valley Water District (SCVWD).

21 16. Since at least November 1982, the SCVWD has known that the “multipurpose
22 operational criteria to Coyote and Anderson Reservoirs could result in tangible flood control benefits
23 without excessive loss in water supply” by adopting operational criteria known as a “rule curve.” In a
24 report submitted to the SCVWD Board of Directors, consultants recommended “Rule Curve # 30”
25 which they chose because it represented “the maximum flood control benefit without water conservation
26 loss.” The consultants further stated as their objective: “Prior to the 1982 storm season, it became clear
27 that [Defendant SCVWD] should, whenever possible, maximize available reservoir storage to alleviate
28 potential flood damages downstream of county reservoirs. Some of the worst flooding during that year

1 occurred along Coyote Creek... It was thus decided that a comprehensive long term study should first be
2 undertaken to evaluate the possible use of Anderson and Coyote Reservoirs for flood control purposes
3 while minimizing any loss in water supply yield. The two reservoirs were constructed and are operated
4 for water conservation purposes. Any flood control benefits accrue only incidentally. The objectives of
5 this study were to develop, if possible, new operating criteria which would maximize incidental flood
6 control storage without excessive loss in water supply." The recommended solution was the adoption of
7 the Rule Curve to balance water conservation with flood protection. (Source: "Multipurpose
8 Operational Analysis for Coyote And Anderson Reservoirs" by Saah, Smith and Korbay, November
9 1982). This solution was belatedly adopted in the fall of 2017 well after the February 2017 Coyote
10 Creek flood. Had the Rule Curve been in place leading up to the 2017 flood, it could have wholly
11 prevented the flood and would certainly have significantly minimized it.

12 17. In an additional Engineer's Report that evaluated the "Design Criteria" for Anderson
13 Dam which was submitted to the SCVWD in October 1985, consultants again confirmed that a key
14 objective for the SCVWD was the "prevention of induced flooding in Coyote Creek due to a possible
15 increase in the one percent outflow from the Leroy Anderson Reservoir." Citing the history contained in
16 related reports, the consultants outlined how the SCVWD had investigated several proposed alternatives
17 to resolve flood problems on Coyote Creek in order to provide "one percent flood protection." They
18 concluded that "Anderson Dam does not meet current design standards for passing the Probable
19 Maximum Flood without overtopping the dam. The inadequate spillway capacity could lead to failure
20 of the dam endangering the downstream urbanized area." (Source: Planning Study consisting of the
21 Engineer's Report and Final Negative Declaration for Modifications to LeRoy Anderson Dam and
22 Spillway, October 1985). Since the SCVWD failed to correct these problems that were clearly known to
23 it for more than three decades, Plaintiffs have suffered enormous losses that would have been prevented
24 by timely governmental action.

25 18. Based on the above historical record, Defendant County of Santa Clara has, and/or at
26 times relevant to this action, has had, legal responsibility for the design, construction, maintenance,
27 management and operation of Anderson Dam and Reservoir and relevant portions of Coyote Creek.
28

1 19. Defendant County of Santa Clara also has legal responsibility for coordinating
2 emergency services throughout Santa Clara County and for protecting and preserving public health
3 throughout Santa Clara County. As the sole provider of public health services for both Santa Clara
4 County and the City of San Jose (the County Public Health Officer is also the Public Health Officer for
5 the City of San Jose), Defendant County of Santa Clara has legal responsibility for (a) protecting and
6 preserving public health throughout Santa Clara County, including within the City of San Jose, (b)
7 protecting the residents of Santa Clara County from environmental health hazards, including residents of
8 the City of San Jose; and (c) notifying at risk residents of Santa Clara County of an impending public
9 health and safety disaster such as a flood, including residents of the City of San Jose when, as herein,
10 they are the persons at risk of such impending disaster.

11 20. Defendants DOES 1 through 100, inclusive, are persons and entities, and all agents,
12 employees of said entities (a) charged with and/or engaged in some manner in the control, management,
13 supervision, oversight, maintenance, operation, design, redesign, construction, and/or ownership of
14 Anderson Dam and Reservoir and/or Coyote Creek; and/or (b) responsible in some manner for the use,
15 deployment, maintenance, testing of emergency notification system(s) or procedures or both; and/or (c)
16 responsible for the identification or approval of, and/or deployment of flood control devices,
17 mechanisms and/or procedures.

18 21. Notwithstanding their responsibilities as set forth in the preceding paragraph, DOES 1
19 through 100 failed to oversee, supervise or deploy and/or approve appropriate flood control devices,
20 measures or mechanisms and/or procedures despite the ability, knowledge and authority to do so.
21 DOES 1 through 100 were negligent or otherwise responsible for the damage and injuries to Plaintiffs,
22 in spite of their knowing of the hazardous conditions present.

23 22. At all times mentioned herein, each of the Defendants was the agent of each of the other
24 Defendants, and at all times acted within the scope and purpose of their agency, and each Defendant has
25 ratified the acts of its agent.

26 23. Plaintiffs are unaware of the true nature and capacities of Defendants DOES 1 through
27 100, inclusive, and therefore sue those Defendants under fictitious names. Plaintiffs will seek leave to
28 amend this complaint to allege their true names and capacities when ascertained. Plaintiffs are informed

1 and believe and on that basis allege that each of these fictitiously named Defendants is legally
2 responsible for the tortious conduct alleged herein, and Plaintiffs' damages as alleged herein were
3 proximately caused by said Defendants.

4 **JURISDICTION AND VENUE**

5 24. The amount in controversy exceeds the minimum jurisdictional limit for Superior Court
6 Unlimited Jurisdiction.

7 25. Venue is proper in Santa Clara County because one or more Defendants reside in Santa
8 Clara County, are subject to the personal jurisdiction of the Court, and because the injury and damage to
9 Plaintiffs occurred and took place within the jurisdictional area of this Court.

10 **APPLICABLE LAW**

11 26. California State law applies to all claims in this action.

12 **THE COYOTE CREEK FLOOD OF 2017**

13 27. Coyote Creek, which measures approximately 63 miles in length, is the longest stream
14 and drains the largest watershed in Santa Clara County and is located within the over 320 square mile
15 watershed system managed by Defendant SCVWD. Water stored in Coyote and Anderson Reservoirs,
16 both of which are owned and managed by the SCVWD, drains into Coyote Creek, which terminates in
17 the San Francisco Bay north of and near the community known as Alviso. Portions of Coyote Creek are
18 located within unincorporated areas of the County of Santa Clara, and other portions are located within
19 the jurisdictional boundaries of the City of San Jose.

20 **A. Over the Past Three and a Half Decades, When Anderson Dam Has Overtopped,
21 Coyote Creek Has Flooded Properties Along and Around its Banks.**

22 28. Anderson Dam was constructed in 1950, and has a capacity of approximately 91,000 acre
23 feet, more than all of the other reservoirs owned and maintained by SCVWD in Santa Clara County
24 combined.

25 29. Since its construction in 1950, there have been approximately 13 major flooding events
26 along Coyote Creek, including the flooding in February 2017. Each of these incidents resulted in
27 preparation of a flood report by or for the SCVWD.

1 30. Since 1950, each time Anderson Dam has overtopped, significant flooding has occurred
2 along and within the “reaches” of Coyote Creek between Tully Road to the south and Montague
3 Expressway to the north, sometimes referred to as the “mid-Coyote Creek reach” (area). In contrast,
4 when Anderson Dam has not overspilled, no flooding has occurred within the mid-Coyote Creek area.

5 31. In March/April 1982, Anderson Dam overtopped. Coyote Creek overtopped its banks and
6 significant flooding occurred along Coyote Creek. As documented in the 1982 Flood Report from the
7 Water District, “Coyote Creek flooded a large area during this storm.”

8 32. In 1983, Anderson Dam overtopped and significant flooding occurred along Coyote
9 Creek. As noted in the Flood Report prepared by the Water District, Coyote Creek flooded in San Jose
10 between Highway 237 and the Bay on both the west and east sides of the Creek.

11 33. In 1997, Anderson Dam overtopped and significant flooding occurred along Coyote
12 Creek – including in the Rock Springs area affected by the Coyote Creek Flood of 2017.

13 34. In 1998, Anderson Dam overtopped and significant flooding occurred along Coyote
14 Creek. According to the 1998 Flood report prepared by the Water District, Golden Wheel mobile home
15 park was “inundated” and residents were evacuated.

16 35. More recently, concerns over seismic stability led to an evaluation of Anderson Dam,
17 which was completed in 2011. It determined that the downstream and upstream embankments could
18 become unstable during a very large magnitude earthquake and that the rupture of faults underlying the
19 dam could have adverse impact on the outlet pipe and intake structure. As the SCVWD has noted: “A
20 breach of Anderson Dam at full capacity could have catastrophic consequences, including inundation
21 and other significant impacts to surrounding land more than 30 miles northwest to San Francisco Bay,
22 and more than 40 miles southeast to Monterey Bay.” (Source: <https://www.valleywater.org/project-updates/dam-reservoir-projects/anderson-dam-seismic-retrofit..>)

24 36. As a result, a 45-foot restriction was approved by the regulatory agencies (California
25 Division of the Safety of Dams [“DSOD”] and the Federal Energy Regulatory Commission [“FERC”])
26 in order to minimize the likelihood of a catastrophic dam rupture and massive flood. This restriction
27 meant that the District was responsible for keeping the water level in the Anderson Reservoir at no more
28 than 68% of capacity.

1 **B. By Early January 2017, Defendants Knew or Should Have Known That Anderson**
2 **Reservoir Was Going to Fill and Spill Over the Top of Anderson Dam and Cause**
3 **Flooding in the Mid-Coyote Creek Area Unless Defendants Took Urgent and**
4 **Effective Measures to Control and Reduce Rapidly Rising Water Levels, But They**
5 **Did Not Warn or Protect Residents—Including Plaintiffs and Their Families—**
6 **From Preventable Harm to Their Persons and Property.**

7 37. In response to forecasts by the National Weather Service predicting substantial rainfall in
8 January 2017, the Water District started releasing water from Anderson Dam through the only discharge
9 gate, which has a capacity of only around 425 cubic feet per second (“cfs”), on or around January 9,
10 2017. Despite these efforts to reduce the water level behind the Anderson Dam, the level in Anderson
11 Reservoir reached the 68% restricted capacity level on or around January 22, 2017.

12 38. The County Office of Emergency Services (OES) established an Operational Plan Period
13 from February 15 to February 21, 2017.

14 39. On February 15, 2017, a full six days before the Coyote Creek flooding at issue here, the
15 County wrote and shared with San Jose and, upon information and belief, the Water District, the
16 following Overview of the Operational Plan Period:

17 “During the 2016-2017 winter storm season, Santa Clara County has received
18 significantly more rain than in past years. Due to the multiple winter storms Santa
19 Clara Valley Water District (SCVWD) total reservoir storage is about 95.5% of
20 capacity at spillway crest, at 130% of restricted capacity, and at 165% of the 20
21 year average for the current month. SCVWD is currently releasing water from 8
22 reservoirs and 2 reservoirs are spilling in addition to the controlled releases. It is
23 expected that Anderson Dam will begin spilling prior to or during the next series
24 of storm systems. (Emphasis added)”.
25

26 40. Based, *inter alia*, on the history of prior floods (as recited above) and weather conditions
27 in early January 2017, all of the Defendants knew or should have known by then, and no later than when
28 Anderson Dam started to spill, that Coyote Creek would flood.

29 41. The first conference call during the Operational Plan period was at 2:00 pm on February
30 15. Representatives from the City of San Jose participated in that call.

31 42. On February 16 at 1:00 pm, County OES coordinated another call. Again, City of San
32 Jose representatives participated. On this call, the Water District reported that Anderson Dam was at
33 99.2% of capacity. On the same call, representatives of the City of San Jose reported “coordinating with
34 city departments to identify potential evacuation center and shelter locations in the event of Coyote
35 Creek Flooding”.

1 43. On February 17, four days before the Coyote Creek flooding, County OES coordinated
2 an additional call. Representatives of San Jose and the Water District both participated. The National
3 Weather Service reported on that call that there would potentially be 4 inches of rain in the mountains
4 and 3 inches in the foothills. On that same call, the Water District reported a “concern for Monday
5 storm on Coyote Creek. Projected 7000 cubic feet per second [“cfs”] peak spillway flow. Sycamore
6 Bridge floods at approx.. 5900 cfs...Anderson Dam is releasing at 500 cfs – when spillway reaches 2000
7 cfs, the outlet release will be closed.” On the same call, San Jose representatives reported that calls
8 about downed trees had increased.

9 44. On or about February 18, Anderson Dam began to overspill. Based on the decades of
10 flood history of Anderson Dam, Defendants knew or should have known that flooding along the Coyote
11 Creek was imminent.

12 45. On February 20 at 8:30 a.m., one day before the flood, County OES coordinated another
13 conference call. Representatives of the Water District and San Jose participated. The overview for the
14 call warned, ***“The potential for copious amounts of rainfall which could cause widespread flooding
exists with this system.”*** (Emphasis added.) On the same call, the Water District warned, “4 reservoirs
15 are spilling, Anderson, Uvas, Lexington and Coyote.” San Jose reported on the same call that its
16 Emergency Operational Center had been activated and that it was “monitoring reservoirs and streams”.

17 46. On the same day, February 20, at 2:13 p.m., the Water District sent an email to the City
18 of San Jose and the County stating that with respect to Coyote Creek, “Peak spill flow forecasts are now
19 between 7k and 9k cfs, and might be sustained depending on the rainfall pattern. With respect to Coyote
20 Creek Flood Thresholds, the Water District said, “7,400 cfs – Rock Spring Neighborhood”.

21 47. Later that same day, February 20, County OES coordinated another call at 3:00 p.m..
22 representatives of the City of San Jose, the Water District and the National Weather service all
23 participated. The Water District reported “4 reservoirs continue to spill. Anderson now projected peak
24 flow is 7,000-9,000 CFS between 6-10am Tuesday with 12-24 hours of peak flow. Spillway flow to
25 downtown San Jose on Coyote Creek is roughly a 6 hour delay.” The City of San Jose reported that it
26 had rescued two urban campers, opened two evacuation centers and that the Red Cross had opened two
27 as well. Plaintiffs still were not notified that flooding was imminent and essentially certain.

1 48. The next day, the day of the flood, February 21, County OES coordinated another call
2 with representatives of San Jose and the Water District in attendance at 9:00 a.m. The Water District
3 reported that seven reservoirs were spilling including Anderson. The City of San Jose reported that
4 “Rock Springs neighborhood is flooded” and that it “will be issuing messaging along Coyote Creek”.

5 49. San Jose Mayor Sam Liccardo has repeatedly acknowledged that the city failed to
6 adequately warn the residents in advance of the floods and the city has repeatedly accepted
7 responsibility for fixing the problem. Liccardo has also repeatedly reiterated that the city made
8 mistakes. “We have repeatedly acknowledged our failure to properly notify residents of the risk of
9 flooding and for relying too heavily on the creek flow data provided by the water district,” Liccardo
10 said. (Source: <https://www.mercurynews.com/2017/06/12/san-jose-flood-victims-file-claims-as-new-records-show-city-staff-tried-to-sound-alarm-before-flooding/>.)

12 50. Mayor Liccardo also told NBC Bay Area News that more could have been done to
13 prevent such a calamity from happening and that he accepted the blame: “There's been a failure,” he
14 said Sunday. “I've said repeatedly, if it happened in my city, I'm responsible.” (Source:
15 <http://www.nbclosangeles.com/news/california/San-Jose-Flooding-Damage-Cost-414864693.html>,
16 Published Tuesday, Feb. 28, 2017).

17 51. City employees knew that flooding was going to occur or was actually occurring along
18 Coyote Creek in February, long before the City issued any evacuation orders or sent any type of
19 emergency notification to residents.

20 52. Various City employees tried to alert their supervisors within the City's emergency
21 response system yet nothing was done in a timely manner, and by the time that the City finally issued
22 evacuation orders, the flood had already inundated 3 neighborhoods - Rock Springs, Olinder/William,
23 and the Golden Wheel and South Bay mobile home parks.

24 53. Many Plaintiffs were terrified by emergency orders to evacuate their homes under
25 traumatic conditions after their homes were already flooded. Many Plaintiffs were also removed from
26 their homes in boats by the San Jose Fire Department. Many Plaintiffs had this trauma compounded by
27 being taken to city emergency shelters which were overrun with sickness, children vomiting, and other
28 unsafe, unsanitary and hazardous conditions.

1 54. An independent analysis done by emergency management consultant Witt O'Brien
2 concluded that San Jose's response to the devastating Coyote Creek Flood of 2017 included repeating
3 mistakes that were made in a similar Coyote Creek flood in January 1997 and that the City relied too
4 heavily on flood projection figures from the Santa Clara Valley Water District.

5 **C. In Early January, Defendant Water District Belatedly Made a Plan to Release and**
6 **Pump Water Out of Anderson Reservoir to Prevent Flooding, But Failed to**
Implement It.

7 55. Starting on or about January 9, 2017—a month and a half before the flood—the Water
8 District began releasing water from Anderson Dam through its outlet valve due to concerns about the
9 amount of rain that had already fallen as well as weather reports that were predicting huge amounts of
10 rain as part of a weather system called an "*atmospheric river*" by the National Weather Service. The
11 District also tracked and monitored the rise in water levels at Anderson Reservoir, but failed to take
12 timely action to obtain and install pumps to reduce the steadily-increased water levels at Anderson
13 Reservoir in order to prevent overtopping.

14 56. Despite the predicted storms and the fact that, as of January 22, 2017, Anderson
15 Reservoir was already in excess of its 68% restricted capacity prescribed by the California Division of
16 the Safety of Dams, the Water District was in active denial of the urgency of controlling water levels at
17 Anderson Dam, in spite of the fact that it had used pumps in the past to reduce water levels at its other
18 reservoirs. Its dilatory approach is illustrated by the following January 22, 2017 communication by a
19 District representative: "we are not planning to install the pump-over just yet, but we are preparing for
20 the potential possibility by obtaining approvals from the regulators beforehand."

21 57. Had the District made plans in a timely manner (and actually implemented them) for a
22 pump over solution and obtained necessary permits in a timely manner, they could have prevented (or
23 significantly reduced the impact of) the flood.

24 58. The Defendants' abject failure for more than three and a half decades to do anything to
25 correct and eliminate the known risk of overtopping of Anderson Dam and flooding along Coyote Creek
26 led to the catastrophic losses as complained of herein.

27 ////

28 ////

FIRST CAUSE OF ACTION
(Inverse Condemnation)
All Plaintiffs v. All Defendants

59. Plaintiffs re-allege and incorporate herein by reference each and every allegation of the foregoing paragraphs as if fully set forth.

60. As a direct and proximate result of Defendants' unreasonable acts and/or omissions as described herein, Anderson Dam posed an unreasonable risk of harm to Plaintiffs, which led to the discharge of water, silt, sewage and debris upon and across the properties Plaintiffs owned or occupied, damaging and diminishing the value of their real and/or personal property.

61. Defendants' taking of and damaging Plaintiffs' real and personal property constituted a taking for a public use and purpose without just compensation. Such taking without compensation has caused Plaintiffs to bear an unfair and disproportionate share and burden of the damage caused by the abject failures of Defendants in violation of Article 1, Section 19 of the California Constitution.

SECOND CAUSE OF ACTION
(Failure to Perform and Violation of Mandatory Duties)
All Plaintiffs v. All Defendants

62. Plaintiffs re-allege and incorporate herein by reference each and every allegation of the foregoing paragraphs as if fully set forth.

63. At all times alleged herein, Defendant the Water District, Defendant County of Santa Clara and DOES 1 through 100 substantially participated in the design, planning, approval, construction, and/or operation of the flood control system of which Anderson Dam is a part, and were obliged to adequately and properly maintain Anderson Dam and Reservoir as well as the Coyote Creek watershed, pursuant inter alia to the California Water Code.

64. At all times alleged herein, Defendants, and each of them, were charged with the responsibility for the maintenance, inspection, repair, and supervision of Coyote Creek.

65. At all times alleged herein, Defendant Santa Clara County was the agency responsible under federal law with managing and operating the Integrated Public Alert & Warning System (“IPAWS”) for the benefit and protection of residents in its jurisdiction in the event of an impending disaster. IPAWS allows access to a wide range of alerting methods including Wireless Emergency Alerts (WEA). The WEA system allows sending alerts, much like text messages to cell phones based

1 on the current location of the phone. This service does not require prior registration. Defendant Santa
2 Clara County failed to use the WEA system (or any emergency warning system) to alert Plaintiffs to
3 evacuate, in spite of clear evidence that a serious flood was imminent. Upon information and belief,
4 Defendant Santa Clara County made representations to elected and appointed officials representing
5 Plaintiffs that IPAWS would be effectively deployed in such an emergency.

6 66. At all times alleged herein, Santa Clara County had a mandatory duty to preserve and
7 protect the public health within its borders. Santa Clara County has also had, at all times relevant, a
8 mandatory duty to protect and preserve environmental health. The County recognizes and
9 acknowledges this duty and obligation; the County Environmental Health Agency includes in its
10 program and services disaster preparedness, disaster relief, and mold relief. Moreover, by agreement
11 between Santa Clara County and the City of San Jose, the County's Chief Public Health Officer serves
12 as the Chief Public Health Officer for the City of San Jose. Despite the County's prescribed duties and
13 responsibilities and the explicit agreement whereby the County's Chief Public Health Officer also serves
14 as the Chief Public Health Officer for the City of San Jose, Santa Clara County failed to provide
15 timely, clear and effective warnings, personal protection, personal assistance, emergency preparedness
16 information or functional support of relief to residents of the City of San Jose who were inundated by
17 sewage-laden toxic flood waters and struggled to preserve and protect themselves, their families, their
18 homes and their possessions

19 67. Inundated San Jose residents including many Plaintiffs were, unbeknownst to them, in
20 harm's way from prolonged contact with flood water – directly by being in flood water, and indirectly
21 through contact with flood-saturated personal property, and/or through efforts to remove standing flood
22 water and/or clean soaked walls or other breeding grounds for toxic mold. This imminent threat and
23 danger to the health of San Jose residents would have been obvious to the County, the County's Public
24 Health Officer and staff and the County's Environmental Health department, had environmental and/or
25 public health workers been deployed full-time, round-the-clock in the physical locations in San Jose
26 where flooding was occurring and in the days immediately prior to and following the flooding. Pro-
27 active public and environmental health intervention to warn and protect residents from these risks was
28 not provided. Instead, residents of flooded areas of San Jose were given handouts of brushes and bleach

from the Red Cross, a gesture that encouraged already stressed out residents to believe that scrubbing walls with bleach was an effective measure to prevent build-up of mold when in fact, post-Katrina, the bleach remedy had been clearly shown not to be effective at all.

68. As a direct and proximate result of the negligent and careless failure of Defendants to discharge their aforementioned mandatory duties, Plaintiffs' real and personal property were severely damaged or destroyed by water, silt and other debris, thereby causing Plaintiffs to sustain damage and severe emotional and physical suffering.

THIRD CAUSE OF ACTION

(Nuisance)

All Plaintiffs v. All Defendants

69. Plaintiffs re-allege and incorporate herein by reference each and every allegation of the foregoing paragraphs as if fully set forth.

70. Defendants' failure to properly maintain and manage Anderson Dam and Reservoir and Coyote Creek constituted an unreasonable act that also breached specific legal and mandatory duties. These conditions also constitute an ongoing nuisance which could cause recurrent floods in the event of heavy rains in the future.

71. Defendants' faulty and irresponsible management, maintenance, operation and use of Anderson Dam and Reservoir and Coyote Creek was an unreasonable use of land constituting a nuisance under California Civil Code Section 3479. Plaintiffs allege upon information and belief that Defendants knew or should have known based upon prior history and information provided to them that as a result of the unreasonable condition in which Anderson Dam and Reservoir and Coyote Creek were maintained, Anderson Dam would overspill and cause massive flooding along the Coyote Creek area, thereby causing damage to homes and real and personal property of Plaintiffs, interfering with Plaintiffs' comfortable enjoyment of their lives, their health, and their real and personal property , all without Plaintiffs' consent.

72. As a direct and proximate result of Defendants' nuisance, Plaintiffs' real and personal property and certain Plaintiffs' persons were all damaged as described herein, and caused fears, anxiety, and other emotional distress and consequential damages to Plaintiffs in an amount to be proven at trial.

|||||

FOURTH CAUSE OF ACTION
(Negligence)
All Plaintiffs v. All Defendants

73. Plaintiffs re-allege and incorporate herein by reference each and every allegation of the foregoing paragraphs as if fully set forth.

74. Defendants, and each of them, had duties which required that they exercise such reasonable and ordinary care in the management, control, improvement, operation, construction, and repair of Anderson Dam and Coyote Creek that Plaintiffs' properties as well as their health and well-being would be protected.

75. Defendants and each of them also had duties which required them to exercise reasonable and ordinary care in notifying Plaintiffs when flooding was likely or certain to occur and of the health and safety hazards of flooding and flood water, and in maintaining, creating, and deploying systems and mechanisms to accomplish such warning. Defendants' failure to fulfill these duties constituted actionable negligence.

76. Defendants, and each of them, created, maintained, allowed to exist, failed to abate, and failed to warn of an unreasonably dangerous condition of public property located near and/or around Plaintiffs' properties, including Anderson Dam and Reservoir and areas in and along Coyote Creek all in breach of Defendants' duties to exercise reasonable and ordinary care.

77. Defendant Santa Clara County negligently and unreasonably failed to provide timely and effective warnings, personal protection, assistance, preparedness information, and functional relief to residents who were inundated by sewage-laden toxic flood waters, mold and other flood related hazards.

78. As a direct and proximate result of Defendants' negligence and breach of their duties, Plaintiffs' real and personal property and persons were damaged as described herein, and caused fears, anxiety, and other emotional distress to Plaintiffs in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
(Trespass)
All Plaintiffs v. All Defendants

79. Plaintiffs re-allege and incorporate herein by reference each and every allegation of the foregoing paragraphs as if fully set forth.

80. On or about February 21, 2017, Plaintiffs were owners and/or possessors of property

consisting of land and improvements and personal property in close proximity to Anderson Dam and Reservoir and Coyote Creek, owned, possessed and controlled by Defendants Water District and City of San Jose and/or DOES 1 through 100.

81. On or before February 21, 2017, Defendants Water District and Does 1 through 100 intentionally, knowingly, carelessly, and negligently performed substandard maintenance, operation, control or supervision of Anderson Dam.

82. On or before February 21, 2017, Defendants Water District and City of San Jose and Does 1 through 100 intentionally, knowingly, carelessly, and negligently performed substandard maintenance, operation, control or supervision of Coyote Creek.

83. As a direct and proximate result of those Defendants' conduct, large quantities of water owned, managed and/or controlled by them moved onto Plaintiffs property without Plaintiffs' permission, and thereby constituted a trespass and interference with Plaintiffs' rights to peaceful possession of their property, in violation of the law; and Plaintiffs sustained injury and damage including fears, anxiety, and emotional distress as hereinafter described, and in an amount to be proven at trial.

SIXTH CAUSE OF ACTION
(Dangerous Condition of Public Property)
All Plaintiffs v. All Defendants

84. Plaintiffs re-allege and incorporate herein by reference each and every allegation of the foregoing paragraphs as if fully set forth.

85. Anderson Dam and Reservoir are and/or at all time relevant were owned and/or controlled and maintained by the Water District and the County. They are and at all times relevant were regulated and overseen by DOES 1 through 100.

86. Coyote Creek was owned, maintained and/or controlled by the Water District and the City of San Jose.

87. Anderson Dam and Reservoir were dangerous and defective on or before February 21, 2017. Defendants knew that the Dam's outlet valve and spillway were inadequate to reduce the level of water sufficiently to prevent a flood. Knowing that this was the case, Defendants nevertheless failed to use pumps and/or siphons to reduce the level of water to meet the 68% water level restrictions required by the State and federal agencies. These dangerous and defective conditions which Defendants, and

each of them, created and/or had notice of, were the proximate and legal cause of Plaintiffs' damage as alleged herein.

88. Anderson Dam and Reservoir were in a dangerous condition that created a reasonably foreseeable risk that it would overspill and cause Coyote Creek to discharge water, silt and debris upon Plaintiffs property, causing damage to Plaintiffs and their property as alleged herein.

89. At all times, Defendants and each of them knew or should have known that Anderson Dam and Reservoir and Coyote Creek were in a dangerous and defective condition.

90. Plaintiffs are further informed and believe that Defendants had actual and constructive knowledge well prior to the February 21, 2017 flood that the dangerous condition would lead to overspilling and flooding along Coyote Creek and that the Coyote Creek channel was full of debris that restricted the water flow through the creek, thereby increasing the likelihood of flooding. Defendant Water District developed a plan to help address and mitigate some of the dangerous condition but failed to implement it in a timely manner, despite the forecast from the National Weather Service that an “atmospheric river” was about to inundate the County. In fact, the District did nothing to even start trying to implement their pump over plan to prevent flooding until time was already up.

91. Defendants failed to prevent and/or remedy said conditions within a reasonable time after knowledge or to reasonably warn Plaintiffs of the dangers thereof, thereby directly and proximately causing the resulting damage to Plaintiffs' real and personal property.

SEVENTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)
All Plaintiffs v. All Defendants

92. Plaintiffs re-allege and incorporate herein by reference each and every allegation of the foregoing paragraphs as if fully set forth.

93. Defendants, and each of them, had a legal duty to Plaintiffs, as foreseeable victims, to exercise reasonable care as set forth herein. Defendants' breach was the legal and proximate cause of the injuries and damages suffered by Plaintiffs.

94. As a result of the negligent conduct of Defendants, and each of them, Plaintiffs suffered serious emotional distress. Defendants knew or should have known that Plaintiffs would be harmed and suffer serious emotional distress during and as a result of their acts, omissions, conduct and/or other

1 wrongdoing. Defendants' conduct, actions and inaction were a substantial factor in causing Plaintiffs
2 serious emotional distress, all of which caused and continues to cause and will cause physical and
3 mental suffering, all to Plaintiffs' general damage in a sum to be determined at the time of trial.

4 95. As a direct and legal result of Defendants' negligence, Plaintiffs were injured
5 emotionally, physically and/or economically and/or were in the zone of danger of the flood.

6 **EIGHTH CAUSE OF ACTION**
7 **(Intentional Infliction of Emotional Distress)**
8 **All Plaintiffs v. All Defendants**

9 96. Plaintiffs re-allege and incorporate herein by reference each and every allegation of the
foregoing paragraphs as if fully set forth.

10 97. Plaintiffs and their neighbors in the areas flooded in February 2017 are working families
11 and retirees; the median income of residents in the zip codes where warnings were not given and where
12 devastating flooding occurs are markedly lower than in zip codes on the West Side of Silicon Valley that
13 would have been flooded by overtopping of Calero Reservoir 20 years ago had the SCVWD not timely
14 installed pumps in Calero Reservoir to keep water levels from overtopping and flooding these
15 economically privileged areas of Silicon Valley. Plaintiffs and their neighbors are also well aware that
16 their suffering and dispossession due to a flood about which they were not warned or protected may be a
17 boon to speculators interested in opportunities to invest as Plaintiffs and their neighbors are pushed to
18 the edge. Defendants have engaged in extreme and outrageous conduct towards Plaintiffs and their
19 neighbors in the 3 neighborhoods most directly affected by the Coyote Creek flood: Olinder/William
20 Street, Rock Springs and the Mobile home Parks – both in the short term and the long term. Specific
21 examples include, but are not limited to:

22 a. The District's promise that 2 bond issues which created special assessments on real
23 property, and which were passed by the voters, would be put into flood control. The
24 district then failed to apply the designated funds to flood control where it was
25 obviously needed. Instead, the District spent the bond funds to protect other areas of
26 the county, particularly other neighborhoods with higher median incomes.
27 b. Knowing weeks in advance that the areas around Coyote Creek were going to flood,
28 endangering lives and property, and failing to protect against the flood, failing to

install pumps despite knowing they were needed, failing to provide necessary health protections and failing to give Plaintiffs notice of the impending flood.

98. Defendants engaged in the aforementioned outrageous conduct with reckless disregard of the probability that such conduct would result in flooding and damage to personal and real property, would put lives in danger, and would cause severe emotional distress to Plaintiffs, Defendants' outrageous conduct was the actual and proximate cause of Plaintiffs' emotional distress.

99. The wrongful acts of Defendants were done maliciously, oppressively, fraudulently and in conscious disregard for the safety and health of the public

100. The conduct of Defendants was without justification and has caused plaintiffs and others impacted by the flood to bear a disproportional, unfair burden.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. General damages as alleged herein;
- b. Damages for loss of property as well as the diminution of property values, according to proof;
- c. Special damages as alleged herein and as according to proof;
- d. Cost of replacement, repair and/or improvement according to proof;
- e. Interest on the principal amount of their damages from February 21, 2017 until paid;
- f. Costs of suit, including reasonable attorneys' fees and all costs and expenses of litigation;
- g. Attorney's fees and expert fees as may be allowable under applicable law, including California Code of Civil Procedure sections 1021.5 and 1036;
- h. Injunctive relief requiring Defendants to put in place and test: 1) appropriate procedures for timely notification to residents in the event of an emergency; 2) pumps and/or other mechanisms to prevent and or mitigate future occurrences; and 3) a functioning plan and program to ensure that Coyote Creek is free and clear of debris or impediments to the creek flow and thereby protect the physical and emotional well-being of Plaintiffs, many of whom still reside in the affected area;

- i. Injunctive relief requiring Defendant Santa Clara County to develop and implement a program to provide emergency health protection and prevention services to be available during future emergencies, as well as to develop and implement a health surveillance program to track, monitor, treat and control disaster-related adverse health impacts; and
- j. For an order awarding such other and further relief as this Court may deem just and proper.

Dated: February 7, 2018

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